

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Mary I. Yu

Hearing Date: March 30, 2001 at 3:00 p.m.

RECEIVED
2001 MAR 30 11:45
SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

JOY ANN GARDNER, and ROBERT
BLANGERES, individually and on behalf of a
class of persons similarly situated,

Plaintiffs,

v.

STIMSON LUMBER COMPANY, an Oregon
corporation,

Defendant.

CLASS ACTION

No. 00-2-17633-3SEA

**[PROPOSED] CLASS CERTIFICATION
ORDER**

The Court, having considered the motion of Plaintiffs for certification of a class in this action, together with the memoranda and materials submitted, the argument of counsel, and the record in this action, hereby finds and rules as follows:

1. The Court orders certification of the following class in this action pursuant to CR 23(b)(3):

All persons in the states of Washington, Oregon, California, Idaho, Utah, Colorado, and Hawaii who own or have owned buildings clad with Stimson Series 400 or Series 500 hardboard siding ("Forestex hardboard siding") installed after January 1, 1985. *

2. Plaintiffs Joy Ann Gardener and Robert Blangeres shall serve as Class Representatives. The firms of Sandler Ahern & McConaughy PLLC, Levy Ram Olson & Rossi LLP, Berding & Weil LLP, and Cunningham, Bounds, Yance, Crowder & Brown are appointed as Class Counsel.

[PROPOSED] CLASS CERTIFICATION ORDER - 1

SANDLER AHERN & MCCONAUGHY PLLC
1200 FIFTH AVENUE, SUITE 1900
SEATTLE, WA 98101-3135
TEL (206) 346-1750
FAX (206) 346-1755

ORIGINAL

1 3. The Court presumes the allegations of the complaint to be true. *Washington Educ.*
 2 *Assn. v. Shelton Sch. Dist. No. 309*, 93 Wn.2d 783, 613 P.2d 769 (1980); *Eisen v. Carlisle &*
 3 *Jacquelin*, 417 U.S. 156, 40 L. Ed. 2d 732, 94 S. Ct. 2140 (1974). The only issue on this motion is
 4 whether the claims alleged benefit class treatment.

5 4. A class action may be the only feasible means to resolve claims where a defendant
 6 inflicts economic injury on a large number of persons for whom pursuit of costly and complex
 7 litigation on an individual basis is not economically feasible. *E.g.*, *Brown v. Brown*, 6 Wn. App.
 8 249, 492 P.2d 581 (1971):

9 [A] primary function of the class suit is to provide a procedure for vindicating claims
 10 which, taken individually, are too small to justify individual legal action but which
 11 are of significant size and importance if taken as a group.

12 We, too, favor a liberal interpretation of CR 23, rather than a restrictive one. Not
 13 only does liberal application of the rule avoid multiplicity of litigation, but (1) it saves
 14 members of the class the cost and trouble of filing individual suits; and (2) it also
 15 frees the defendant from the harassment of identical future litigation.

16 *Id.* at 256-57.

17 **The Elements of CR 23(a) Are Met.**

- 18 5. Rule 23(a) calls for certification where:
- 19 a. The class is so **numerous** that joinder of all members is impracticable;
 - 20 b. There are **common questions** of law or fact;
 - 21 c. The claims of the class representatives are **typical** of those of the class; and
 - 22 d. The class representatives will **adequately protect** the interests of the class.

23 6. The class is numerous. The class is too numerous to be individually joined. With
 24 sales of more than \$74 million of Forestex hardboard siding during the class period, it is apparent
 25 that this product has been applied to thousands of homes.

26 7. There are common questions of law and fact. The rule requires only that there be a
 "common nucleus of operative facts" or that the defendant be engaged in a common course of

[PROPOSED] CLASS CERTIFICATION ORDER - 2

SANDLER AHERN & McCONAUGHY PLLC
 1200 FIFTH AVENUE, SUITE 1900
 SEATTLE, WA 98101-3135
 TEL. (206) 346-1750
 FAX (206) 346-1755

1 conduct. *Brown*, 6 Wn. App. at 255. Here, the core questions concerning the manufacture,
2 marketing, and performance of Forestex hardboard siding common to the claims of all class
3 members include, but are not limited to, the following:

- 4 a. Whether Forestex hardboard siding is defective in that it is subject to moisture
5 penetration, will prematurely fail, and is not suitable for use as an exterior siding product;
- 6 b. Whether Stimson was negligent in the design, manufacture, and sale of Forestex
7 hardboard siding;
- 8 c. Whether failure of Forestex hardboard siding will damage the paint overlay or
9 substructure or components of the wall system;
- 10 d. Whether Stimson knew or should have known that Forestex hardboard siding is
11 defective, would prematurely fail, is not suitable for use as an exterior siding product, and
12 otherwise is not as warranted and represented by Stimson;
- 13 e. Whether Stimson fraudulently concealed from and/or failed to disclose to the class the
14 true defective nature of Forestex hardboard siding;
- 15 f. Whether Stimson had a duty to the class to disclose the defective nature of Forestex
16 hardboard siding;
- 17 g. Whether the facts omitted and/or otherwise not disclosed by Stimson to the class are
18 material facts;
- 19 h. Whether Stimson intentionally concealed or omitted to disclose the true nature of the
20 siding products for the purpose of inducing the class to purchase Forestex hardboard
21 siding;
- 22 i. Whether Stimson engaged in unfair competition and/or unfair deceptive acts and/or
23 practices when it failed or omitted to disclose either through its advertising, warranties
24 and other express representations, the true nature of its Forestex hardboard siding;
- 25
26

[PROPOSED] CLASS CERTIFICATION ORDER - 3

SANDLER AHERN & McCONAUGHY PLLC
1200 FIFTH AVENUE, SUITE 1900
SEATTLE, WA 98101-3135
TEL (206) 346-1750
FAX (206) 346-1755

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- j. Whether Plaintiffs and the class are entitled to compensatory damages, and the measure of such damages;
- k. Whether as a result of Stimson's oppression, fraud or malice, Plaintiffs and the class are entitled to punitive damages, and the amount of such damages;
- l. Whether Stimson should be declared financially responsible for notifying all class members of Forestex hardboard siding and for the costs and expenses of repair and replacement of all such siding products; and
- m. Whether Stimson should be ordered to disgorge, for the benefit of the Class, all or part of its profits received from the sale of its defective siding, and/or to make full restitution to Plaintiffs and the class members.

8. The claims of the Class Representatives are typical. Typicality means that the claims of the named plaintiffs arise under the same legal theory as those of class members, even if there are factual variations in the claims. *Brown*, 6 Wn. App. at 255. The claims of the named Class Representatives in this case are "typical" of the class. They both own homes that have been clad with Forestex hardboard siding.

9. Plaintiffs will fairly and adequately protect the interests of the class. This prong of Rule 23 looks to two factors: (1) the qualifications and experience of plaintiffs' counsel; and (2) whether the plaintiffs have disabling conflicts with the class. *Social Services Union Local 535 v. County of Santa Clara*, 609 F.2d 944, 947 (9th Cir. 1979). Plaintiffs have retained experienced, qualified counsel. No conflicts are known.


The Elements of CR 23(b)(3) Are Met.

10. If CR 23(a) is satisfied, the Court should certify if one element of Rule 23(b) is met. CR 23(b)(3) applies where common questions predominate and a class action is the superior method for adjudicating the controversy.

1 11. Plaintiffs also have satisfied the standards of CR 23(b)(3). The predominant
 2 questions concern the manufacture and performance of Forestex hardboard siding, its marketing,
 3 Stimson's knowledge, and whether Forestex hardboard siding is defective. A class action is the
 4 most efficient - indeed the only - way to litigate these claims. There is no interest in individuals
 5 controlling their own actions, and centralization of the litigation here will be efficient. The parties
 6 are in the Pacific Northwest, and it appears that the predominance of siding failures have also been
 7 in this region.

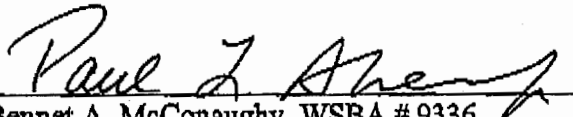
8 12. If the parties are unable to agree on a form of class notice and a notice plan, Plaintiffs
 9 shall file and serve a motion for approval of their proposed form of class notice and notice plan.

10 13. *The Court may manage the case through sub-classing if necessary*
 11 *in order to deal with any*
 12 *impacts.*
 It is so ordered this 8 day of June, 2001.

13 
 14 The Honorable Mary I. Yu

15 Presented By:

16 SANDLER AHERN & McCONAUGHY PLLC

17 By 
 18 Bennet A. McConaughy, WSBA # 9336
 19 Paul L. Ahern, Jr., WSBA # 9190

20 *Attorneys for Plaintiffs*

21
 22 ** Excluded from the class are Stimson, any entity in which Stimson has*
 23 *a controlling interest, and its legal representatives, assigns and successors.*
 24 *Also excluded is the judge to whom the case is assigned and any member*
 25 *of the judge's immediate family. Excluded from the class are claims for*
 26 *personal injury and claims included in other certified class actions.*

[PROPOSED] CLASS CERTIFICATION ORDER - 5

SANDLER AHERN & McCONAUGHY PLLC
 1200 FIFTH AVENUE, SUITE 1900
 SEATTLE, WA 98101-3135
 TEL (206) 346-1750
 FAX (206) 346-1755